

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

KENNY D. SAYRE,

Plaintiff,

v.

Civil Action No. 2:10cv108

**C.O. HUMBLE and
C.O. POWELL,**

Defendants.

ORDER

On October 4, 2010, Magistrate Judge John S. Kaull filed his Report and Recommendation ("R&R")(Doc. 8), wherein the plaintiff was directed, in accordance with 28 U.S.C. § 636(b)(1), to file with the Clerk of Court any written objections within fourteen (14) days after being served with a copy of the R&R. Plaintiff filed his objections on October 22, 2010. See Doc. 12.

The Magistrate Judge recommends that the plaintiff's Application to Proceed Without Prepayment of Fees (Doc. 5) be denied, and that the case be dismissed with prejudice pursuant to 28 U.S.C. §1915(g), which provides that a prisoner shall not be permitted to proceed *in forma pauperis* if he has brought three or more actions or appeals that were dismissed as frivolous, malicious, or for failing to state a claim. The only exception under 28 U.S.C. §1915(g) is if the prisoner is under imminent danger of serious physical injury.

Upon examination of the report from the Magistrate Judge, it appears to this Court that the plaintiff's action was properly considered by the Magistrate Judge in the R&R. Because the plaintiff has filed objections, the Court has conducted a *de novo* review of all matters now before it, and finds the plaintiff's objections to be without merit. More

specifically, the Court finds that plaintiff has not proven that he is in imminent danger of serious physical harm, and thus cannot meet the standard for this exception to the three strikes provision of § 1915. Finding the Magistrate Judge's R&R to accurately reflect the law applicable in this case, it is hereby

ORDERED that Magistrate Judge Kaul's R&R be, and the same hereby is, **ADOPTED**. Accordingly, it is

ORDERED that plaintiff's Application to Proceed Without Prepayment of Fees (Doc. 5), shall be, and the same is hereby, **DENIED**. It is further

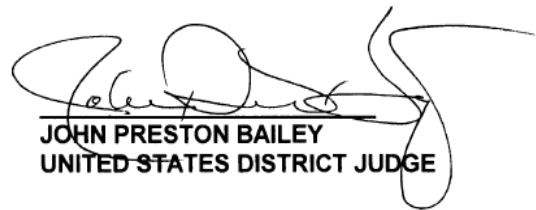
ORDERED that the above-styled civil action shall be, and the same is hereby, **DISMISSED WITHOUT PREJUDICE** pursuant to 28 U.S.C. §1915(g), and that this civil action be **STRICKEN** from the docket of the Court. It is further

ORDERED that the Clerk shall enter judgment for the defendants. It is further

ORDERED that, if plaintiff should desire to appeal the decision of this Court, written notice of appeal must be received by the Clerk of this Court within thirty (30) days from the date of the entry of the Judgment Order, pursuant to Rule 4 of the Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and the \$450.00 docketing fee should also be submitted with the notice of appeal. In the alternative, at the time the notice of appeal is submitted, plaintiff may, in accordance with the provisions of Rule 24(a) of the Federal Rules of Appellate Procedure, seek leave to proceed *in forma pauperis* from the United States Court of Appeals for the Fourth Circuit.

The Clerk of the Court is directed to transmit a copy of this Order to all parties appearing herein.

DATED: November 24, 2010.



JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE